



Digital Colony Partners

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1<sup>st</sup> February 2018

**Ofcom**

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### Re: Physical Infrastructure Market Review

Dear Sir or Madam,

We welcome the opportunity to respond to Ofcom's Physical Infrastructure Market Review 2018<sup>1</sup> ('PIMR') and more broadly, Ofcom's Strategic Policy Position<sup>2</sup> published in July 2018. As a new entrant into the UK market, Digital Colony UK Holdco Ltd ('Digital Colony') welcomes Ofcom's broad review of the UK regulatory environment.

With plans for significant long-term investment in the UK market, Digital Colony particularly welcomes Ofcom's position of fostering regulatory certainty in order to underpin and incentivise the levels of investment required to support the provision of commercial and residential superfast broadband and future wireless technologies (including 5G). Furthermore, we welcome the focus of the current PIMR and Ofcom's proposed regulatory measures to promote upstream competition in the fibre market. Following the success of implementing measures to promote competition in the downstream market, we believe the time is right to promote competition upstream, specifically through the proposal '*that BT should be required to provide unrestricted access to the entirety of its duct and pole network to all telecom operators*'. It is this proposal that we focus on in this response letter.

### Introduction to Digital Colony

Digital Colony is a global investment firm with a unique focus on next generation mobile and internet infrastructure. Digital Colony combines the sector knowledge of Digital Bridge, a leading owner and operator of digital infrastructure businesses, and the investment expertise of Colony Capital, Inc. (NYSE: CLNY), a leading real estate investment management firm. Having acquired Opencell and Stratto in the UK in 2018, Digital Colony is actively looking to invest across the mobile and fixed infrastructure sector including planned investments in Data Centres, Mobile Towers, Small Cells and Fibre networks.

### Review of physical markets

The building of owned physical infrastructure, such as underground ducts and telegraph poles, to support fibre networks is a significant barrier to entry and prevents investment at scale by competing operators. We welcome Ofcom's position that Openreach, who owns the most comprehensive network of ducts and poles, currently holds market power and acknowledges that currently it can deploy fibre more cheaply and quickly than competing networks.

By mandating access to these ducts and poles, Ofcom is incentivising competing networks to invest its capital in fibre services rather than inefficiently allocating it to parallel physical infrastructure. This efficient allocation of capital will provide improved competition in the upstream market, greatly improving the provision of services to residential, business and mobile networks. As we can see from Figure 1.1, increased competition drives greater Fibre km deployments and

<sup>1</sup> Ofcom (Nov 2018). '*Physical Infrastructure Market Review - Access to ducts and poles to support investment*'

<sup>2</sup> Ofcom (July 2018). '*Regulatory certainty to support investment in full-fibre broadband - Ofcom's approach to future regulation*'

Ofcom’s proposed remedies will take a significant step to driving increased upstream competition and therefore, improved downstream delivery of fibre services.<sup>3</sup>

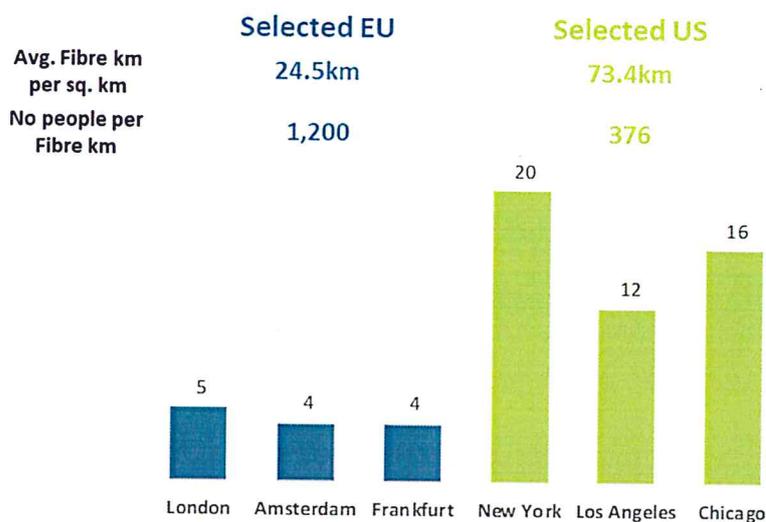


Figure 1.1:  
Number of Connectivity Service Providers in major cities Central Business Districts

- We can see the impact of higher competition in US cities leading to higher Fibre deployed per sq. km and fewer people per Fibre km sharing capacity
- Ofcom’s proposed remedies to encourage competition in upstream fixed networks will greatly improve the business cases of competing network providers
- With increased competition, we can hope to see dramatic improvements in the average Fibre km per sq. km, as well as fewer people per Fibre km sharing

## General Remedies proposed in the PIMR

We broadly welcome the General Remedies proposed by Ofcom in promoting access to BT’s physical infrastructure. The General Remedies set the framework for promotion of upstream competition and provide incentive for competing fibre networks to invest in fibre services whilst reducing the barriers to entry in having to invest in parallel physical infrastructure.

In order for the remedies to be successful, it is our belief that the processes and procedures of accessing the physical infrastructure must be simple, straight forward and enforceable. We support Ofcom’s strategy of providing long term consistency in regulation to underpin investment but urge Ofcom to regularly assess the effectiveness and enforcement of the General Remedies to maintain competition in the upstream market.

## Specific Remedies proposed in the PIMR

Digital Colony welcomes Ofcom’s proposed Physical Infrastructure Access (‘PIA’) remedy, and its associated proposed obligations on BT, that build on the General Remedies. We welcome the proposed provision on PIA ancillary services and the requirements for the publication of a Reference Offer (including relevant Service Level Commitments and Service Level Guarantees). Furthermore, we welcome Ofcom’s proposed implementation timeframe of one month from the PIMR statement date as this allows competing networks to accelerate plans for deploying competing fibre networks.

## Mixed usage

Further to stakeholder information received by Ofcom as part of its 2018 Wholesale Local Access (‘WLA’)<sup>4</sup>, Digital Colony welcomes Ofcom’s position in promoting the ‘mixed usage’ of technologies in order to obtain access to Openreach’s ducts and poles. The business case for fibre investment is a long-term commitment and any restrictions on the technologies or usage will impair the ability to make returns on this investment. Ofcom’s position in allowing access to support fibre deployment for **both** residential and business customers, as well as supporting connectivity of mobile networks (such as 5G networks and small cell deployments) is greatly welcomed by Digital Colony and reduces a significant barrier to our investing in UK infrastructure.

<sup>3</sup> CMA Strategy Consulting. Research commissioned by Digital Colony into Fibre and Small Cell deployments

<sup>4</sup> Ofcom (March 2018). ‘Wholesale Local Access Market Review’

## Network usability

A key consideration for implementing an effective PIA remedy is to ensure network usability. As Ofcom set out, *‘competing networks will encounter sections of infrastructure which they cannot use, either because the existing infrastructure is faulty or because there is insufficient capacity in the section’*. We agree that it would be an inefficient allocation of capital for competing networks to build parallel networks in situations where Openreach could repair faulty infrastructure.

Whilst Ofcom acknowledge the need for BT to make certain adjustments to overcome unusable sections of the physical infrastructure, we believe that the proposed remedies are not stringent enough to enforce the PIA adequately. We believe that a more prescriptive approach to ensuring Openreach does not act unreasonably is immediately necessary in order to prevent delays in implementing PIA and ensuring upstream competition flourishes. We do not disagree with the process set out by Ofcom in assessing the need for network adjustment (e.g. necessity, feasibility and efficiency). However, we are concerned that there is insufficient disincentive for Openreach to unreasonably delay access to physical infrastructure.

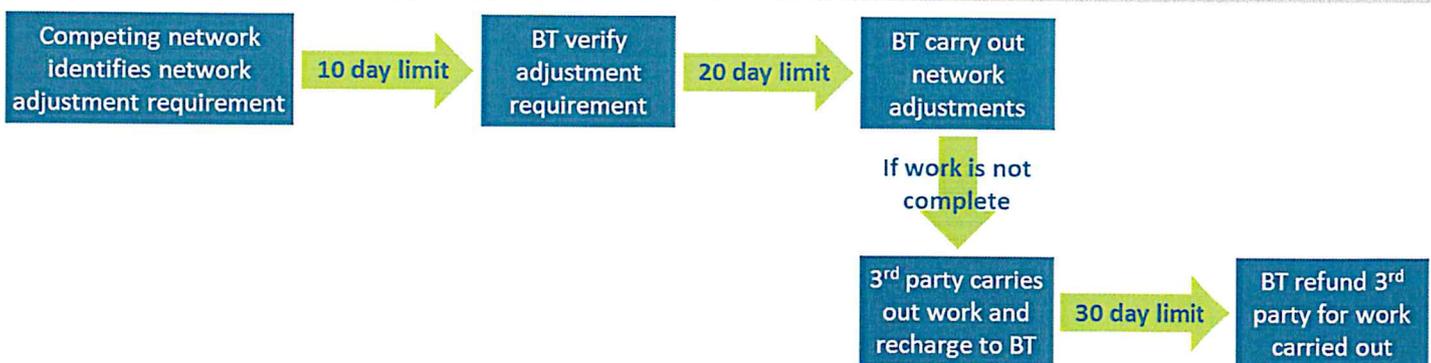
In both the feasibility and efficiency assessment criteria (section 5.60 – 5.69) we propose arbitration through the instruction of third-party network vendors to assess the feasibility and efficiency of the proposed network adjustment. For the feasibility assessment, we suggest engaging with third parties to carry out feasibility assessments (e.g. wayleave access, planning restrictions) of the proposed adjustments to provide an independent review of the case.

Regarding the efficiency assessment criteria, we believe that there is incentive for Openreach to over estimate the costs of carrying out adjustment works on the physical infrastructure as the factual and counterfactual scenarios *‘should be based on Openreach’s own engineering practices applicable at the time’*. We would urge Ofcom to consider allowing competing networks to commission third party network vendors to propose competing cost estimates for the proposed network adjustment in order to obtain a ‘market estimate’ of the work to be carried out.

In addition to the adjustment costs, an update to the processes of working with Openreach is required to ensure effective implementation of the PIA. Having consulted several market players, it is our understanding that the current processes are not fit-for-purpose and will not serve to efficiently implement the proposed PIA. Currently, when a competing provider identifies an area requiring network adjustment, the process takes several months and often results in the competing provider having to commission 3<sup>rd</sup> party suppliers to carry out the adjustment. Furthermore, BT often does not refund for the work carried out as it should, reducing the capital that would be allocated to further upstream competition.

We propose the following prescriptive process (Figure 1.2) to ensure the effective implementation of PIA and prevent Network Adjustments from being a bottleneck to deployment and an unnecessary allocation of resources and capital.

Figure 1.2: Proposed network adjustment processes and fail-safe



This fail-safe mechanism will enable successful implementation of the PIA process and provide further consistency for long-term investors, unlocking immediate deployments in the UK.

Naturally, Ofcom would have to support such a proposal through regulatory measures to ensure smooth implementation. We do, however, urge Ofcom to consider a more prescriptive approach to the remedies in this consultation to ensure a timely implementation of the PIA and incentivise competing networks to invest near term in fibre deployments.



## We broadly support Ofcom's proposed PIA remedy

We welcome Ofcom's review of the UK telecom market and its approach to regulating the market in a more holistic manner. We are encouraged by Ofcom's focus on ensuring regulatory certainty to incentivise long term investment in the UK fibre markets, specifically the proposed remedies set out in the PIMR.

Digital Colony has great experience investing in long term telecom infrastructure and believes that simple, straight forward regulatory processes and shared access to Physical Infrastructure are vital in incentivising competing networks to invest in a market. We believe that Ofcom's approach to the proposed PIA remedy will support a significant uplift in investment from competing networks and drive wider socio-economic benefits in the UK. We do, however, believe that further prescriptive measures can be taken to ensure the smooth implementation of the PIA and that strict SLAs/SLGs can provide additional comfort to competing networks wanting to engage with the PIA process. We are particularly supportive of involving third party network vendors to drive market arbitration with regards to the costing and delivery of network adjustments when required.

We believe that Ofcom has taken positive steps towards futureproofing its regulatory regime and developing a fit-for-purpose set of remedies to provide access to the physical infrastructure required by competing network providers. We are excited about the future of the UK telecom market and look forward to working closely with the industry in providing a world class infrastructure that underpins next generation fixed and wireless network deployments.

Best Regards

A handwritten signature in black ink that reads "G. Payne". The signature is written in a cursive, flowing style.

**Graham Payne**

**CEO**

**Digital Colony UK Holdco Ltd**